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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,841	03/25/2004	Mark Noonan	NOON-101(US)	6740
28997	7590	08/24/2005	EXAMINER	
HARNESS, DICKEY, & PIERCE, P.L.C			BEACH, THOMAS A	
7700 BONHOMME, STE 400				
ST. LOUIS, MO 63105			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/808,841

Applicant(s)

NOONAN, MARK

Examiner

Thomas A. Beach

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18, 21-36, 38-45 and 48 is/are rejected.
- 7) ☒ Claim(s) 19, 20, 37, 46 and 47 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/14/05, 07/14/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 6-10, 15-18, 21-24, 29-36, 38-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Muzzammel 6,735,887. Muzzammel shows an apparatus/method for removal and disposal of materials having a wheel assembly 12 having an axle including a fulcrum member capable of transmitting a recoil reaction to an action; a driving member 9 with a U-shaped tubular body (claim 23) having an upper portion, a middle portion and a lower portion, wherein the middle portion is attached to the fulcrum member of the axle; a handle 10 attached to the upper portion of the driving member and capable of moving the wheel assembly; and a blade 2 attached to the lower portion of the driving member, the blade adapted to pick up a load of material from a surface when the blade is lowered to the surface by raising the handle and pushing forward; wherein the blade springs upwards and forwards, thereby releasing the load of material briskly away from the apparatus when the handle is pushed downwards to cause the wheel to compress and recoil through the fulcrum member at the axle of the wheel.

As concerns claims 2, 18, Muzzammel shows the axle comprises a tubular body having first and second ends which support spokes connecting the axle to the rim, the tubular body forming the fulcrum member (fig 1).

As concerns claim 3, Muzzammel shows the wheel assembly has a quick release for disconnecting the wheel assembly from the driving member;

As concerns claims 4, 38, 39, Muzzammel shows the rim of the wheel assembly 12 is adapted to receive an elastic member, including a bicycle tire and body weight is applied at the waist level of the operator.

As concerns claims 6, 21, 40-41, Muzzammel shows the blade 2 has two sidewalls and a back wall to keep the load of material from spilling out from the blade, where the load is propelled to the side of the shovel blade and the load is propelled in a straight-out departure path from the shovel blade.

As concerns claim 7, 22, Muzzammel shows the blade is shaped in the form of a scoop having a radius at the bottom,

As concerns claims 8-10, 24, Muzzammel shows the driving member comprises a tubular material made of metal or plastic (col. 1, lines 10-24).

As concerns claims 15-16, 29-30, 35-36, Muzzammel show the apparatus capable of loading sand and gravel or snow and slush.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 11, 25, 43 and 48 (as applied to claim 42 below) are rejected under 35 U.S.C. 103(a) as being unpatentable over Muzzammel 6,735,887 in view of Armstrong 5,810,408. Muzzammel does not show the middle portion of the driving member is generally S-shaped or the handle is slidably adjustable through a telescoping tubular material inside a hollow tubular driving member. However, Armstrong shows a similar snow removal device having a middle portion of the driving member is generally S-shaped (fig. 7; claims 5 and 43) and the handle is slidably adjustable through a telescoping tubular material inside a hollow tubular driving member (16; claim 11, 25). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Muzzammel, as taught by Armstrong, to include and adjustable s-shaped handle to ergonomically make the shovel more efficient, thus reducing the fatigue of the operator and improving the usefulness of the shovel.

5. Claims 12-14, 26-28, 32-34, 42, 44, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muzzammel 6,735,887 alone. Muzzammel shows apparatus but does not show the specific dimension of the overall length of the apparatus is between about 78 to 88 inches, and can be increased to between about 89 to 100 inches (claim 12, 26, 33) or the diameter of the wheel is between about 30 to 36 inches (claim 13, 27, 32, 42 as applied to claim 1) or the height of the handle from a datum plane directly under the wheel is between about 48 to 60 inches, and can be increased to between about 42 to 66 inches (claim 14, 28, 34). However, Therefore, it

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would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the dimensions of the length, wheel and handle of the apparatus since these changes in size would not require routine experimentation which is recognized as being within ordinary skill in the art, thus these dimensions are not patentably distinct and the apparatus would function equally well just outside these ranges.

As concern claim 44, the combination shows the axle comprises a tubular body having first and second ends which support spokes connecting the axle to the rim, the tubular body forming the fulcrum member (Muzzammel; fig 1).

As concern claim 45, the combination shows the handle ratio of 1:1 (Muzzammel; fig 1).

### ***Allowable Subject Matter***

6. Claims 19-20, 37 and 46-47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Beach whose telephone number is

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571.272.6988. The examiner can normally be reached on Monday-Friday, 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571.272.6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thomas A. Beach

August 22, 2005

**THOMAS A. BEACH**  
Patent Examiner  
Group 3600